

Surface Mining Reclamation and Enforcement, Interior

§ 800.14

amounts for the permit area as determined in accordance with §800.14:

(1) A performance bond or bonds for the entire permit area;

(2) A cumulative bond schedule and the performance bond required for full reclamation of the initial area to be disturbed; or

(3) An incremental bond schedule and the performance bond required for the first increment in the schedule.

(e) OSM may approve, as part of a State or Federal program, an alternative bonding system, if it will achieve the following objectives and purposes of the bonding program:

(1) The alternative must assure that the regulatory authority will have available sufficient money to complete the reclamation plan for any areas which may be in default at any time; and

(2) The alternative must provide a substantial economic incentive for the permittee to comply with all reclamation provisions.

§800.12 Form of the performance bond.

The regulatory authority shall prescribe the form of the performance bond. The regulatory authority may allow for:

(a) A surety bond;

(b) A collateral bond;

(c) A self-bond; or

(d) A combination of any of these bonding methods.

§800.13 Period of liability.

(a)(1) Performance bond liability shall be for the duration of the surface coal mining and reclamation operation and for a period which is coincident with the operator's period of extended responsibility for successful revegetation provided in §816.116 or §817.116 of this chapter or until achievement of the reclamation requirements of the Act, regulatory programs, and permit, whichever is later.

(2) With the approval of regulatory authority, a bond may be posted and approved to guarantee specific phases of reclamation within the permit area provided the sum of phase bonds posted equals or exceeds the total amount required under §§800.14 and 800.15. The scope of work to be guaranteed and the

liability assumed under each phase bond shall be specified in detail.

(b) Isolated and clearly defined portions of the permit area requiring extended liability may be separated from the original area and bonded separately with the approval of the regulatory authority. Such areas shall be limited in extent and not constitute a scattered, intermittent, or checkerboard pattern of failure. Access to the separated areas for remedial work may be included in the area under extended liability if deemed necessary by the regulatory authority.

(c) If the regulatory authority approves a long-term, intensive agricultural postmining land use, in accordance with §816.133 or §817.133 of this chapter, the applicable 5 or 10 year period of liability shall commence at the date of initial planting for such long-term agricultural use.

(d)(1) The bond liability of the permittee shall include only those actions which he or she is obligated to take under the permit, including completion of the reclamation plan, so that the land will be capable of supporting the postmining land use approved under §816.133 or §817.133 of this chapter.

(2) Implementation of an alternative postmining land use approved under §§816.133(c) and 817.133(c) which is beyond the control of the permittee, need not be covered by the bond. Bond liability for prime farmland shall be as specified in §800.40(c)(2).

§800.14 Determination of bond amount.

(a) The amount of the bond required for each bonded area shall:

(1) Be determined by the regulatory authority;

(2) Depend upon the requirements of the approved permit and reclamation plan;

(3) Reflect the probable difficulty of reclamation, giving consideration to such factors as topography, geology, hydrology, and revegetation potential; and

(4) Be based on, but not limited to, the estimated cost submitted by the permit applicant.

(b) The amount of the bond shall be sufficient to assure the completion of the reclamation plan if the work has to

§ 800.15

30 CFR Ch. VII (7–1–06 Edition)

be performed by the regulatory authority in the event of forfeiture, and in no case shall the total bond initially posted for the entire area under one permit be less than \$10,000.

(c) An operator's financial responsibility under § 817.121(c) of this chapter for repairing material damage resulting from subsidence may be satisfied by the liability insurance policy required under § 800.60.

§ 800.15 Adjustment of amount.

(a) The amount of the bond or deposit required and the terms of the acceptance of the applicant's bond shall be adjusted by the regulatory authority from time to time as the area requiring bond coverage is increased or decreased or where the cost of future reclamation changes. The regulatory authority may specify periodic times or set a schedule for reevaluating and adjusting the bond amount to fulfill this requirement.

(b) The regulatory authority shall—

(1) Notify the permittee, the surety, and any person with a property interest in collateral who has requested notification under § 800.21(f) of any proposed adjustment to the bond amount; and

(2) Provide the permittee an opportunity for an informal conference on the adjustment.

(c) A permittee may request reduction of the amount of the performance bond upon submission of evidence to the regulatory authority proving that the permittee's method of operation or other circumstances reduces the estimated cost for the regulatory authority to reclaim the bonded area. Bond adjustments which involve undisturbed land or revision of the cost estimate of reclamation are not considered bond release subject to procedures of § 800.40.

(d) In the event that an approved permit is revised in accordance with subchapter G of this chapter, the regulatory authority shall review the bond for adequacy and, if necessary, shall require adjustment of the bond to conform to the permit as revised.

§ 800.16 General terms and conditions of bond.

(a) The performance bond shall be in an amount determined by the regulatory authority as provided in § 800.14.

(b) The performance bond shall be payable to the regulatory authority.

(c) The performance bond shall be conditioned upon faithful performance of all the requirements of the Act, this chapter, the regulatory program, and the approved permit, including completion of the reclamation plan.

(d) The duration of the bond shall be for the time period provided in § 800.13.

(e)(1) The bond shall provide a mechanism for a bank or surety company to give prompt notice to the regulatory authority and the permittee of any action filed alleging the insolvency or bankruptcy of the surety company, the bank, or the permittee, or alleging any violations which would result in suspension or revocation of the surety or bank charter or license to do business.

(2) Upon the incapacity of a bank or surety company by reason of bankruptcy, insolvency, or suspension or revocation of a charter or license, the permittee shall be deemed to be without bond coverage and shall promptly notify the regulatory authority. The regulatory authority, upon notification received through procedures of paragraph (e)(1) of this section or from the permittee, shall, in writing, notify the operator who is without bond coverage and specify a reasonable period, not to exceed 90 days, to replace bond coverage. If an adequate bond is not posted by the end of the period allowed, the operator shall cease coal extraction and shall comply with the provisions of § 816.132 or § 817.132 of this chapter and shall immediately begin to conduct reclamation operations in accordance with the reclamation plan. Mining operations shall not resume until the regulatory authority has determined that an acceptable bond has been posted.

§ 800.17 Bonding requirements for underground coal mines and long-term coal-related surface facilities and structures.

(a) *Responsibilities.* The regulatory authority shall require bond coverage, in an amount determined under § 800.14, for long-term surface facilities and structures, and for areas disturbed by surface impacts incident to underground mines, for which a permit is required. Specific reclamation techniques required for underground mines